

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
ALBANY DIVISION

RICKY BLOUNT,  
  
Plaintiff,

VS.

Sheriff JAMIL SABA and Officer Kearsae,  
  
Defendants.

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**1 : 07-CV-19 (WLS)**

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**RECOMMENDATION**

Presently pending in this *pro se* prisoner 42 U.S.C. § 1983 action is defendant's motion to dismiss for plaintiff's failure to prosecute (doc. 14).

Plaintiff filed this action on January 22, 2007. Defendants timely filed their answer on April 2, 2007. Defendants filed the instant motion on January 4, 2008, asserting the plaintiff has not made any effort to diligently prosecute this action, and in fact has failed to file any response to discovery propounded by defendants.

Plaintiff filed a response to the motion, asserting that any failure on his part to prosecute the action was due to his incarceration at Macon State Prison, where, he alleges, prison officials have taken his legal material and where he fails to receive legal mail. Plaintiff states he has filed a lawsuit against officials at Macon State Prison for such interference with his ability to prosecute his legal actions in Blount v. Terry, 5:07-cv-481 in the Middle District of Georgia, Macon Division. Plaintiff asserts that he wishes to continue with the instant lawsuit.

Given the response by plaintiff, the undersigned does not find a clear record of delay or a willful failure of the plaintiff to take meaningful action to prosecute this action. Therefore, it is the RECOMMENDATION of the undersigned that defendants' motion to dismiss be **DENIED**.

However, plaintiff must respond to defendants' discovery requests in a timely manner, or else face dismissal of this action for failure respond thereto.

Pursuant to 28 U.S.C. § 636(b)(1), the parties may file written objections to this recommendation with the Honorable W. Louis Sands, United States District Judge, WITHIN TEN (10) DAYS of receipt thereof.

**SO RECOMMENDED**, this 2<sup>nd</sup> day of July, 2008.

//S Richard L. Hodge  
RICHARD L. HODGE  
UNITED STATES MAGISTRATE JUDGE

msd